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Lisa S. Martin

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EXAMINER

GORT, ELAINE L

ART UNIT

PAPER NUMBER

3687

NOTIFICATION DATE

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* LISA S. MARTIN,  
9 TRACY A. MASSON,  
10 MATTHEW S. SNYDER, and  
11 PHILIP F. MALLORY  
12

13  
14 Appeal 2009-011642  
15 Application 09/773,102  
16 Technology Center 3600  
17

18  
19 Decided: December 4, 2009  
20

21  
22 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH  
23 A. FISCHETTI, *Administrative Patent Judges*.  
24 FETTING, *Administrative Patent Judge*.

25 DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Lisa S. Martin, Tracy A. Masson, Matthew S. Snyder, and Philip F.  
3 Mallory (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final  
4 rejection of claims 1 and 3-18, the only claims pending in the application on  
5 appeal.

6 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)  
7 (2002).

8 SUMMARY OF DECISION<sup>1</sup>

9 We AFFIRM.

10 THE INVENTION

11 The Appellants invented a way for ordering materials from suppliers  
12 (Specification 2:9).

13 An understanding of the invention can be derived from a reading of  
14 exemplary claim 1, which is reproduced below [bracketed matter and some  
15 paragraphing added].

- 16 1. A method for a manufacturer to order material, comprising:  
17 [1] considering a quantity of a material available from a  
18 plurality of suppliers via a computer system;

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed December 5, 2008) and the Examiner's Answer ("Ans.," mailed March 5, 2009).

1 [2] considering a quantity of a material available from a  
2 plurality of supplier logistics centers via a computer system;  
3 [3] identifying a supplier or a supplier logistics center to receive  
4 an order for the material based upon  
5 the considering the quantity of material available from  
6 the plurality of suppliers and  
7 the considering the quantity of materials available from  
8 the plurality of supplier logistic centers; and  
9 [4] sending electronically an order for the material to the  
10 supplier or supplier logistics center identified to receive the  
11 order  
12 [4a] wherein the material is not ordered until the  
13 manufacturer realizes a demand,  
14 [5] wherein  
15 the manufacturer realizes the demand for the material  
16 after orders are received from customers,  
17 fulfilling the orders requires  
18 assembling products, and  
19 assembling the products requires  
20 the material.

21 THE REJECTION

22 The Examiner relies upon the following prior art:

Shavit	US 4,799,156	Jan. 17, 1989
Goss	GB 2,336,003 A	Oct. 6, 1999

23 Claims 1 and 3-18 stand rejected under 35 U.S.C. § 103(a) as  
24 unpatentable over Goss and Shavit.

ARGUMENTS

The Appellants argue independent claim 1 and rely on these arguments for the dependent claims. The Appellants separately argue independent claims 7 and 13 together and rely on these arguments for the dependent claims. Accordingly we treat claims 1 and 3-6 as being argued as a group and claim 1 as representative of the group, and claims 7-18 as being argued as a group and claim 7 as representative of the group. 37 C.F.R. § 41.37(c)(1)(vii) (2008).

The Examiner found that Goss described the build to order nature of manufacturing and Shavit described the electronic communications of claim 1. The Appellants contend that the art fails to describe limitation [4a] because within Goss, it is assumed that the components needed to prepare the kit trays are already present within the manufacturing facility. App. Br. 5:Top ¶. The Appellants also contend that the art fails to describe limitation [4] because Shavit's request for quote would not necessarily include quantities desired. App. Br. 6:Top ¶.

Claim 7, as with claim 1, requires identifying a supplier or a supplier logistics center to receive an order for material based upon the considering the quantity of material available from the plurality of suppliers and the considering the quantity of materials available from the plurality of supplier logistic centers. The Appellants argue neither reference describes this or assembling a computer system. App. Br. 7.

ISSUES

The issue of whether the Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 1 and 3-18 under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit turns on whether Goss describes ordering when a demand is received as in limitation [4a].

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related to the Prior Art*

*Goss*

01. Goss is directed to manufacturing and assembling computer systems in a build to order environment. Goss 1:6-8.

02. Goss describes that responsive to orders received, kit trays are prepared that each hold the components needed to build an ordered product. Goss 4:4-6.

03. Goss describes how its kitting unit 130 receives computer system components from a truck delivering components just in time. Goss 9:16-18.

*Shavit*

04. Shavit is directed to interactive communications and processing of business transactions between buyers, wholesalers, distributors, suppliers, agents, and financial and freight carrier services. Shavit 1:5-12.

1           05. Shavit describes how a distributor may offer its customers an  
2           on-line interactive, convenient and consistent way to place orders  
3           or conduct any other business with the distributor. This provides  
4           buyers with a reliable and consistent way of reaching multiple  
5           sources to shop for goods and electronic access to carriers for  
6           shipping. Shavit 6:23-43.

7           06. Shavit describes entering purchase orders electronically and  
8           also electronically converting requests for quotes to purchase  
9           orders as is. Shavit 13:51-64.

10          07. Shavit's bidding process permits both pricing an RFQ and  
11          confirming the availability of the products as requested. Shavit  
12          15:61-63.

13          *Facts Related To The Level Of Skill In The Art*

14          08. Neither the Examiner nor the Appellants have addressed the  
15          level of ordinary skill in the pertinent arts of systems analysis and  
16          programming, manufacturing systems design, or just in time  
17          systems design. We will therefore consider the cited prior art as  
18          representative of the level of ordinary skill in the art. *See Okajima*  
19          *v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he  
20          absence of specific findings on the level of skill in the art does not  
21          give rise to reversible error ‘where the prior art itself reflects an  
22          appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755  
23          F.2d 158, 163 (Fed. Cir. 1985).  
24

1       *Facts Related To Secondary Considerations*

2           09. There is no evidence on record of secondary considerations of  
3           non-obviousness for our consideration.

4                               PRINCIPLES OF LAW

5       *Obviousness*

6           A claimed invention is unpatentable if the differences between it and  
7       the prior art are “such that the subject matter as a whole would have been  
8       obvious at the time the invention was made to a person having ordinary skill  
9       in the art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham*  
10      *v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

11          In *Graham*, the Court held that that the obviousness analysis is  
12      bottomed on several basic factual inquiries: “[ (1) ] the scope and content of  
13      the prior art are to be determined; [ (2) ] differences between the prior art and  
14      the claims at issue are to be ascertained; and [ (3) ] the level of ordinary skill  
15      in the pertinent art resolved.” *Graham*, 383 U.S. at 17. *See also KSR*, 550  
16      U.S. at 406. “The combination of familiar elements according to known  
17      methods is likely to be obvious when it does no more than yield predictable  
18      results.” *KSR*, 550 U.S. at 416.

19                               ANALYSIS

20          As to the Appellants’ first argument that the art fails to describe  
21      limitation [4a] because within Goss, it is assumed that the components  
22      needed to prepare the kit trays are already present within the manufacturing  
23      facility, the Examiner found that Goss describes using just in time inventory  
24      supply. Ans. 6. We agree with the Examiner. Goss describes how its



1 kitting unit receives computer system components from a truck delivering  
2 components just in time. FF 03.

3 As to the second argument that the art fails to describe limitation [4]  
4 because Shavit's request for quote would not necessarily include quantities  
5 desired, the Examiner responded that Shavit demonstrates the notoriety of  
6 electronically sending an actual order. Ans. 7. We agree with the Examiner.  
7 Shavit describes placing orders electronically with multiple sources to shop  
8 for goods. FF 05. Such orders would necessarily include quantities desired  
9 as orders are firm offers ready for acceptance, and Shavit further describes  
10 how requests for quotes also have all of the information needed for an order.  
11 FF 06.

12 As to the argument that the references fail to describe identifying  
13 suppliers based on considering material availability, the Examiner found that  
14 the consideration is notoriously well known as evidenced by Shavit and that  
15 assembling a computer system is described by Goss. Ans. 4-5. We agree  
16 with the Examiner. Goss is directed to manufacturing and assembling  
17 computer systems in a build to order environment. FF 01. Shavit considers  
18 material availability in identifying suppliers to solicit quotes from. FF 07.

#### 19 CONCLUSIONS OF LAW

20 The Appellants have not sustained their burden of showing that the  
21 Examiner erred in rejecting claims 1 and 3-18 under 35 U.S.C. § 103(a) as  
22 unpatentable over Goss and Shavit.

23

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1 and 3-18 under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

mev

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